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ATTORNEYS FOR APPELLEE:

STEVE CARTER
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**IN THE
COURT OF APPEALS OF INDIANA**

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Julie N. Cantrell, Judge
Cause No. 45G04-0509-FB-78

KIRSCH, Judge

James C. Chester was convicted of dealing in a schedule I controlled substance¹ as a Class B felony and was sentenced to eleven years with two years suspended for an executed sentence of nine years. He appeals, raising the following issue: whether his sentence was inappropriate in light of the nature of the offense and his character.

We affirm.

FACTS AND PROCEDURAL HISTORY

On September 22, 2005, Chester sold four ten-dollar bags of heroin to a confidential informant (“CI”). The CI arranged to purchase the heroin from Chester, also known as “Dollar,” and his co-defendant at a gas station in Hammond, Indiana. The CI purchased the four bags of heroin with two twenty-dollar bills, which had previously been photocopied. When Chester was later stopped by the police, he had the two twenty-dollar bills in his possession, as well as over \$1,500 in cash in his pockets. His co-defendant was found to be in possession of nine bags of heroin.

Chester was convicted of dealing in a schedule I controlled substance as a Class B felony after a jury trial. At the sentencing hearing, the trial court found the following aggravating circumstances: (1) Chester’s criminal history; (2) that Chester is in need of correctional and rehabilitative treatment that can be best provided by commitment to a penal facility because of his criminal convictions; and (3) that prior leniency has not deterred Chester’s criminal behavior. *Appellant’s App.* at 84-85. As mitigating circumstances, the trial court found the following: (1) the crime neither caused nor threatened serious harm to person or property, or Chester did not contemplate that it would do so; and (2) Chester’s poor

¹ See IC 35-48-4-2.

family history. *Id.* at 84. The trial court found that the aggravating circumstances outweighed the mitigating circumstances and sentenced Chester to eleven years with two years suspended for a total of nine years executed. Chester now appeals.

DISCUSSION AND DECISION

Appellate courts may revise a sentence after careful review of the trial court's decision if they conclude that the sentence is inappropriate based on the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). Even if the trial court followed the appropriate procedure in arriving at its sentence, the appellate court still maintains a constitutional power to revise a sentence it finds inappropriate. *Hope v. State*, 834 N.E.2d 713, 718 (Ind. Ct. App. 2005).

Chester argues that his eleven-year sentence with two years suspended was inappropriate in light of the nature of the offense and his character. He contends that although he had an extensive criminal history, the nature of the offense was not as severe as many other drug cases because the quantity of heroin involved in the transaction and the amount of the sale were "both strictly small-time." *Appellant's Br.* at 6. He also asserts that his sentence was inappropriate because the majority of the heroin was found on the person of his co-defendant and not him. He claims that an executed sentence of six years would have been more appropriate.²

² It also appears that Chester is arguing that the trial court abused its discretion in not finding two additional mitigating circumstances, the fact that he is the father to three minor children and his health. An allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record. *Anglemyer v. State*, 868 N.E.2d 482, 493 (Ind. 2007). Neither of these alleged mitigating factors were supported by the record. The trial court did not abuse its discretion in not finding these as mitigating circumstances.

As to the nature of the offense, although Chester only sold four bags of heroin to the CI in the transaction that occurred, his co-defendant was in possession of nine more bags when they were arrested, and Chester had over \$1,500 in cash on his person in addition to the forty dollars from the transaction with the CI. Furthermore, heroin is a very addictive and deadly drug. As to Chester's character, the evidence showed that he had an extensive criminal history. He had four felony convictions from Illinois, which consisted of three manufacturing/dealing in controlled substance convictions and one possession of a controlled substance conviction. While out on bond in the present case, Chester was also charged with new offenses in Cook County, Illinois. We therefore conclude that an eleven-year sentence with two years suspended, which resulted in Chester only serving nine years and less than the advisory sentence, was not inappropriate in light of the nature of the offense and his character.

Affirmed.

RILEY, J., and MAY, J., concur.